

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

MARY CARTER

PLAINTIFF

V.

CAUSE NO.: 3:22-cv-712-KHJ-MTP

CITY OF JACKSON, MISSISSIPPI

DEFENDANT

**CITY OF JACKSON, MISSISSIPPI'S
ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW, the City of Jackson, Mississippi (herein after “the City”), by and through counsel, and pursuant to the Federal Rules of Civil Procedure and other applicable authority, submits this Answer and Affirmative Defenses to the Complaint filed in the above-styled cause and states as follows:

Without waiving any of the defenses stated herein, the Defendants respond to the allegations contained in the Complaint, paragraph by paragraph, as follows:

PARTIES

1. Defendants admit, upon information and belief, the allegations contained in Paragraph 1 of the Complaint.
2. Defendants admit, upon information and belief, the allegations contained in Paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. Without waiving any defenses, restrictions, limitations or immunities, defendants admit that this Court has jurisdiction over this matter as Plaintiff asserts a federal claim. Without waiving any defenses, restrictions, limitations or immunity answering defendants admit that this Court has venue over this matter.

4. The allegations contained in Paragraph 4 of the Complaint do not appear to be directed to the Defendants, however, if a response is required by the Defendant, the Defendant denies the allegations contained in Paragraph 4 of the Complaint.

STATEMENT OF THE FACTS

5. The allegations contained in Paragraph 5 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

6. The Defendant admits the allegations contained in Paragraph 6 of the Complaint.

7. The Defendant denies, as worded, the allegations contained in Paragraph 7 of the Complaint.

8. Defendant admits that Plaintiff was a Certified Class A Operator, but denies the remaining claims contained in Paragraph 8 of the Complaint.

9. The Defendant denies, as worded, the allegations contained in Paragraph 9 of the Complaint.

10. The Defendant denies, as worded, the allegations contained in Paragraph 10 of the Complaint.

11. The Defendant denies, as worded, the allegations contained in Paragraph 11 of the Complaint.

12. The Defendant denies, as worded, the allegations contained in Paragraph 12 of the Complaint.

13. The allegations contained in Paragraph 13 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

14. The allegations contained in Paragraph 14 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

15. The allegations contained in Paragraph 15 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

16. The allegations contained in Paragraph 16 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

17. The allegations contained in Paragraph 17 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

18. The allegations contained in Paragraph 18 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

19. The allegations contained in Paragraph 19 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegations.

20. The Defendant denies, as worded, the allegations contained in Paragraph 20 of the Complaint.

21. The Defendant denies, as worded, the allegations contained in Paragraph 21 of the Complaint.

22. The Defendant denies, as worded, the allegations contained in Paragraph 22 of the Complaint.

23. Defendant denies the allegations contained in Paragraph 23 of the Amended Complaint.

24. The Defendant denies, as worded, the allegations contained in Paragraph 24 of the Complaint.

25. The Defendant denies, as worded, the allegations contained in Paragraph 25 of the Complaint.

26. Defendant admits the allegations contained in Paragraph 26 of the Complaint.

27. Defendant denies the allegations contained in Paragraph 27 of the Complaint.

28. The Defendant denies, as worded, the allegations contained in Paragraph 28 of the Complaint.

29. The Defendant denies, as worded, the allegations contained in Paragraph 29 of the Complaint.

30. The allegations contained in Paragraph 30 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

31. The allegations contained in Paragraph 18 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

32. Defendant denies the allegations contained in Paragraph 32 of the Complaint.

33. Defendant denies the allegations contained in Paragraph 33 of the Complaint.

34. The Defendant denies, as worded, the allegations contained in Paragraph 34 of the Complaint.

35. The Defendant denies, as worded, the allegations contained in Paragraph 35 of the Complaint.

36. The Defendant denies, as worded, the allegations contained in Paragraph 36 of the Complaint.

37. Defendant admits the allegations contained in Paragraph 37 of the Complaint.

38. The Defendant denies, as worded, the allegations contained in Paragraph 36 of the Complaint.

39. The Defendant denies, as worded, the allegations contained in Paragraph 39 of the Complaint.

40. The Defendant denies, as worded, the allegations contained in Paragraph 40 of the Complaint.

41. The Defendant denies, as worded, the allegations contained in Paragraph 41 of the Complaint.

42. The Defendant denies, as worded, the allegations contained in Paragraph 42 of the Complaint.

43. The allegations contained in Paragraph 43 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

44. The allegations contained in Paragraph 44 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

45. The allegations contained in Paragraph 45 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

46. The allegations contained in Paragraph 46 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

47. The allegations contained in Paragraph 47 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

48. The allegations contained in Paragraph 48 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

49. The Defendant denies, as worded, the allegations contained in Paragraph 42 of the Complaint.

50. The Defendant denies, as worded, the allegations contained in Paragraph 50 of the Complaint.

51. Defendant admits the allegations contained in Paragraph 51 of the Complaint.

52. The Defendant denies, as worded, the allegations contained in Paragraph 52 of the Complaint.

53. The Defendant denies, as worded, the allegations contained in Paragraph 53 of the Complaint.

54. Defendant admits the allegations contained in Paragraph 54 of the Complaint.

55. Defendant admits the allegations contained in Paragraph 55 of the Complaint.

56. The Defendant denies, as worded, the allegations contained in Paragraph 56 of the Complaint.

57. The Defendant denies, as worded, the allegations contained in Paragraph 57 of the Complaint.

58. The Defendant denies, as worded, the allegations contained in Paragraph 58 of the Complaint.

59. The Defendant denies, as worded, the allegations contained in Paragraph 59 of the Complaint.

60. The Defendant denies, as worded, the allegations contained in Paragraph 60 of the Complaint.

61. The Defendant denies, as worded, the allegations contained in Paragraph 61 of the Complaint.

62. The Defendant denies, as worded, the allegations contained in Paragraph 62 of the Complaint.

63. The Defendant denies, as worded, the allegations contained in Paragraph 63 of the Complaint.

64. The Defendant denies, as worded, the allegations contained in Paragraph 64 of the Complaint.

65. The Defendant denies, as worded, the allegations contained in Paragraph 65 of the Complaint.

66. The Defendant denies, as worded, the allegations contained in Paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

69. The Defendant denies, as worded, the allegations contained in Paragraph 69 of the Complaint.

70. The Defendant denies, as worded, the allegations contained in Paragraph 70 of the Complaint.

71. The Defendant denies, as worded, the allegations contained in Paragraph 71 of the Complaint.

72. The Defendant denies, as worded, the allegations contained in Paragraph 72 of the Complaint.

73. The Defendant denies, as worded, the allegations contained in Paragraph 73 of the Complaint.

74. The Defendant denies, as worded, the allegations contained in Paragraph 74 of the Complaint.

75. The Defendant denies, as worded, the allegations contained in Paragraph 75 of the Complaint.

76. The Defendant denies, as worded, the allegations contained in Paragraph 76 of the Complaint.

77. The Defendant denies, as worded, the allegations contained in Paragraph 77 of the Complaint.

78. The Defendant denies, as worded, the allegations contained in Paragraph 78 of the Complaint.

79. The Defendant denies, as worded, the allegations contained in Paragraph 79 of the Complaint.

80. The Defendant denies, as worded, the allegations contained in Paragraph 80 of the Complaint.

81. The Defendant denies the allegations contained in Paragraph 81 of the Complaint.

82. The Defendant denies, as worded, the allegations contained in Paragraph 82 of the Complaint.

83. The Defendant denies the allegations contained in Paragraph 66 of the Complaint.

84. The Defendant denies, as worded, the allegations contained in Paragraph 84 of the Complaint.

85. The Defendant denies, as worded, the allegations contained in Paragraph 85 of the Complaint.

86. The Defendant denies, as worded, the allegations contained in Paragraph 86 of the Complaint.

87. The Defendant denies, as worded, the allegations contained in Paragraph 87 of the Complaint.

89. The Defendant denies, as worded, the allegations contained in Paragraph 89 of the Complaint.

90. The Defendant denies, as worded, the allegations contained in Paragraph 90 of the Complaint.

91. The Defendant denies, as worded, the allegations contained in Paragraph 91 of the Complaint.

92. The Defendant denies, as worded, the allegations contained in Paragraph 92 of the Complaint.

93. The Defendant denies, as worded, the allegations contained in Paragraph 93 of the Complaint.

94. The Defendant denies, as worded, the allegations contained in Paragraph 94 of the Complaint.

95. The Defendant denies, as worded, the allegations contained in Paragraph 95 of the Complaint.

96. The Defendant denies, as worded, the allegations contained in Paragraph 96 of the Complaint.

97. The Defendant denies, as worded, the allegations contained in Paragraph 97 of the Complaint.

98. The Defendant denies, as worded, the allegations contained in Paragraph 98 of the Complaint.

99. The Defendant denies, as worded, the allegations contained in Paragraph 99 of the Complaint.

100. The Defendant denies, as worded, the allegations contained in Paragraph 100 of the Complaint.

101. The Defendant denies the allegations contained in Paragraph 101 of the Complaint.

102. The Defendant denies the allegations contained in Paragraph 102 of the Complaint.

103. The Defendant denies the allegations contained in Paragraph 103 of the Complaint.

104. The Defendant denies, as worded, the allegations contained in Paragraph 104 of the Complaint.

105. The Defendant denies, as worded, the allegations contained in Paragraph 105 of the Complaint.

106. The Defendant denies, as worded, the allegations contained in Paragraph 106 of the Complaint.

107. The Defendant denies, as worded, the allegations contained in Paragraph 107 of the Complaint.

108. The Defendant denies, as worded, the allegations contained in Paragraph 108 of the Complaint.

109. The Defendant denies, as worded, the allegations contained in Paragraph 109 of the Complaint.

110. The Defendant denies, as worded, the allegations contained in Paragraph 110 of the Complaint.

111. The Defendant denies, as worded, the allegations contained in Paragraph 111 of the Complaint.

112. The Defendant denies, as worded, the allegations contained in Paragraph 112 of the Complaint.

113. The Defendant denies, as worded, the allegations contained in Paragraph 113 of the Complaint.

114. The Defendant denies, as worded, the allegations contained in Paragraph 114 of the Complaint.

115. The Defendant denies, as worded, the allegations contained in Paragraph 115 of the Complaint.

116. The Defendant denies, as worded, the allegations contained in Paragraph 116 of the Complaint.

117. The Defendant denies, as worded, the allegations contained in Paragraph 117 of the Complaint.

118. The Defendant denies, as worded, the allegations contained in Paragraph 118 of the Complaint.

119. The Defendant denies, as worded, the allegations contained in Paragraph 100 of the Complaint.

120. The allegations contained in Paragraph 120 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

121. The allegations contained in Paragraph 121 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

122. The allegations contained in Paragraph 122 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

123. The allegations contained in Paragraph 123 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

124. The allegations contained in Paragraph 124 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

125. The allegations contained in Paragraph 125 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

126. The allegations contained in Paragraph 126 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

127. The allegations contained in Paragraph 127 of the Complaint do not appear to be directed to the Defendant, however, if a response is required by the Defendant, the Defendant denies said allegation.

128. The Defendant denies, as worded, the allegations contained in Paragraph 128 of the Complaint.

129. The Defendant denies, as worded, the allegations contained in Paragraph 129 of the Complaint.

130. The Defendant denies, as worded, the allegations contained in Paragraph 130 of the Complaint.

131. The Defendant denies, as worded, the allegations contained in Paragraph 131 of the Complaint.

132. The Defendant denies, as worded, the allegations contained in Paragraph 117 of the Complaint.

133. The Defendant denies, as worded, the allegations contained in Paragraph 133 of the Complaint.

134. The Defendant denies, as worded, the allegations contained in Paragraph 134 of the Complaint.

135. The Defendant denies, as worded, the allegations contained in Paragraph 135 of the Complaint.

136. The Defendant denies, as worded, the allegations contained in Paragraph 136 of the Complaint.

137. The Defendant denies, as worded, the allegations contained in Paragraph 137 of the Complaint.

138. The Defendant denies, as worded, the allegations contained in Paragraph 138 of the Complaint.

139. The Defendant denies, as worded, the allegations contained in Paragraph 139 of the Complaint.

140. The Defendant denies, as worded, the allegations contained in Paragraph 140 of the Complaint.

141. The Defendant denies, as worded, the allegations contained in Paragraph 141 of the Complaint.

142. The Defendant denies, as worded, the allegations contained in Paragraph 142 of the Complaint.

143. The Defendant denies, as worded, the allegations contained in Paragraph 143 of the Complaint.

144. The Defendant denies, as worded, the allegations contained in Paragraph 144 of the Complaint.

145. The Defendant denies, as worded, the allegations contained in Paragraph 145 of the Complaint.

146. The Defendant denies, as worded, the allegations contained in Paragraph 146 of the Complaint.

147. The Defendant denies, as worded, the allegations contained in Paragraph 147 of the Complaint.

148. The Defendant denies, as worded, the allegations contained in Paragraph 148 of the Complaint.

149. The Defendant denies, as worded, the allegations contained in Paragraph 149 of the Complaint.

150. The Defendant denies, as worded, the allegations contained in Paragraph 150 of the Complaint.

151. The Defendant denies, as worded, the allegations contained in Paragraph 151 of the Complaint.

152. The Defendant denies, as worded, the allegations contained in Paragraph 152 of the Complaint.

153. The Defendant denies, as worded, the allegations contained in Paragraph 153 of the Complaint.

154. The Defendant denies, as worded, the allegations contained in Paragraph 154 of the Complaint.

155. The Defendant denies, as worded, the allegations contained in Paragraph 155 of the Complaint.

156. The Defendant denies, as worded, the allegations contained in Paragraph 156 of the Complaint.

157. The Defendant denies, as worded, the allegations contained in Paragraph 157 of the Complaint.

158. The Defendant denies, as worded, the allegations contained in Paragraph 158 of the Complaint.

159. The Defendant denies, as worded, the allegations contained in Paragraph 159 of the Complaint.

160. The Defendant denies, as worded, the allegations contained in Paragraph 160 of the Complaint.

161. The Defendant denies, as worded, the allegations contained in Paragraph 161 of the Complaint.

162. The Defendant denies, as worded, the allegations contained in Paragraph 162 of the Complaint.

163. The Defendant denies, as worded, the allegations contained in Paragraph 163 of the Complaint.

164. The Defendant denies, as worded, the allegations contained in Paragraph 164 of the Complaint.

165. The Defendant denies, as worded, the allegations contained in Paragraph 165 of the Complaint.

166. The Defendant denies, as worded, the allegations contained in Paragraph 166 of the Complaint.

167. The Defendant denies, as worded, the allegations contained in Paragraph 167 of the Complaint.

168. The Defendant denies, as worded, the allegations contained in Paragraph 168 of the Complaint.

169. The Defendant denies, as worded, the allegations contained in Paragraph 169 of the Complaint.

170. The Defendant denies, as worded, the allegations contained in Paragraph 117 of the Complaint.

171. The Defendant denies, as worded, the allegations contained in Paragraph 171 of the Complaint.

172. The Defendant denies, as worded, the allegations contained in Paragraph 172 of the Complaint.

173. The Defendant denies, as worded, the allegations contained in Paragraph 173 of the Complaint.

174. The Defendant denies, as worded, the allegations contained in Paragraph 174 of the Complaint.

175. The Defendant denies, as worded, the allegations contained in Paragraph 175 of the Complaint.

176. The Defendant denies, as worded, the allegations contained in Paragraph 176 of the Complaint.

177. The Defendant denies, as worded, the allegations contained in Paragraph 177 of the Complaint.

178. The Defendant denies, as worded, the allegations contained in Paragraph 178 of the Complaint.

179. The Defendant denies, as worded, the allegations contained in Paragraph 179 of the Complaint.

180. The Defendant denies, as worded, the allegations contained in Paragraph 180 of the Complaint.

181. The Defendant denies, as worded, the allegations contained in Paragraph 181 of the Complaint.

182. The Defendant denies, as worded, the allegations contained in Paragraph 182 of the Complaint.

183. The Defendant denies, as worded, the allegations contained in Paragraph 183 of the Complaint.

184. The Defendant denies, as worded, the allegations contained in Paragraph 184 of the Complaint.

185. The Defendant denies, as worded, the allegations contained in Paragraph 185 of the Complaint.

186. The Defendant admits the allegations contained in Paragraph 186 of the Complaint.

187. The Defendant denies, as worded, the allegations contained in Paragraph 187 of the Complaint.

188. The Defendant denies the allegations contained in Paragraph 188 of the Complaint.

189. The Defendant denies the allegations contained in Paragraph 189 of the Complaint.

190. The Defendant denies the allegations contained in Paragraph 190 of the Complaint.

191. The Defendant denies, as worded, the allegations contained in Paragraph 191 of the Complaint.

192. The Defendant does not have enough information to admit or deny the allegation contained in Paragraph 192.

193. The Defendant denies, as worded, the allegations contained in Paragraph 193 of the Complaint.

CAUSE OF ACTION

**COUNT I: VIOLATION OF FIRST AMENDMENT THROUGH
42 U.S.C. §1983 – RETALIATION**

194. Defendant repeats and incorporates by reference each and every defense, admission, and denial to paragraphs 1-193 as if the same were specifically set out herein.

195. The Defendant denies the allegations contained in Paragraph 195 of the Complaint.

196. The Defendant denies the allegations contained in Paragraph 196 of the Complaint.

197. The Defendant denies the allegations contained in Paragraph 197 of the Complaint.

198. The Defendant denies the allegations contained in Paragraph 190 of the Complaint.

199. The Defendant denies the allegations contained in Paragraph 190 of the Complaint.

PRAYER FOR RELIEF

As for the last unnumbered paragraph which commences “Wherefore premises considered. . .,” the Defendant denies each and every allegation contained therein, including subparagraphs (1)-(9), and would affirmatively aver Plaintiff is not entitled to any recovery whatsoever.

AND NOW, having fully and completely answered the Amended Complaint and allegations filed against it, Defendant pleads as follows:

AFFIRMATIVE DEFENSES

I.

The Plaintiff fails to state a claim upon which relief can be granted.

II.

The Plaintiff failed to fully and properly comply with the notice requirements as set forth in MISS. CODE ANN. § 11-46-11 (1972), as amended, and this Court is without jurisdiction over this matter.

III.

This Defendant is immune from suit as alleged in the Amended Complaint pursuant to the Mississippi Tort Claims Act as codified in MISS. CODE ANN. § 11-46-1, et seq. (as amended).

IV.

The Plaintiff has failed to state a cause of action against this Defendant, pursuant to MISS. CODE ANN. § 11-46-9.

V.

At all times and as to all matter material to the Complaint, this Defendant acted reasonably and in accordance with the law and did not breach any duty which may have been owed to Plaintiff.

VI.

At all material times, herein, the Defendant and its employees, agents, and servants, at all times relevant hereto, used the degree of care required of hem under law and are not liable in damages to the Plaintiff.

VII.

The Plaintiff has a duty to use reasonable care to mitigate damages, if any. Any damages which could have been mitigated through the use of reasonable care are not recoverable.

VIII.

Any injury, damage, or deprivation alleged or suffered by the Plaintiff was the result of the Plaintiff's failure to act reasonably to avoid or mitigate such injury, damage or deprivation.

IX.

The actions or inactions on the part of the Plaintiff were the sole, proximate and only cause of the incident complained of and the alleged damages sustained by the

Plaintiff, if any. That in the alternative, the actions or inactions on the part of the Plaintiff amounted to an intervening cause and as such, constitutes the sole, proximate cause and only cause of the incident complained of and the damages sustained by the Plaintiff if any.

X.

If the actions or inactions on the part of the Plaintiff were not the sole, proximate and only cause of the incident complained of and the alleged damages sustained by the Plaintiff, if any, the actions or inactions on the part of the Plaintiff caused and contributed to the incident complained of and the damages sustained by the Plaintiff, if any, and any damages which the Plaintiff would otherwise be entitled must be reduced in degree and to the proportion that the action or inaction of the Plaintiff caused or contributed to the incident.

XI.

This Defendant asserts any and all other defenses available to it under MISS. CODE ANN. § 85-5-7.

XII.

The Plaintiff's damages, if any, were proximately caused and are a result of a superseding and/or intervening cause for which this Defendant cannot be held liable and for which recovery cannot be had against this Defendant.

XIII.

Under the facts and circumstances of this action, this Defendant cannot be held liable for punitive damages.

XIV.

An award of compensatory damages, pre-judgment and post-judgment interest, attorneys' fees, costs of suit and for such other and further relief against this Defendant is statutorily barred and/or not warranted in this case.

XV.

This individual Defendant is entitled to qualified immunity, discretionary immunity, sovereign immunity and/or any other applicable immunity.

XVI.

The Defendant hereby invokes the defenses of expiration of the statute of limitation(s), waiver, laches, and ripeness, lack of mutual assent, lack of consideration, lack of definitive terms and lack of contract.

XVII.

The Defendant hereby gives notice that it intends to rely upon such other and further defenses which may become available or apparent during discovery in this civil action and reserves the right to amend its answer to assert any such defenses.

Respectfully submitted this the 3rd day of January, 2023.

CITY OF JACKSON, MISSISSIPPI

BY: /s/ Claire Barker
Claire Barker, MSB # 101312
Special Assistant to the City Attorney

OF COUNSEL:

OFFICE OF THE CITY ATTORNEY
455 East Capitol Street
Post Office Box 2779
Jackson, Mississippi 39207-2779
Office: 601-960-1799
Facsimile: 601-960-1756

CERTIFICATE OF SERVICE

The undersigned certifies that she has this day transmitted via electronic mail through ECF electronic filing a true and correct copy of the foregoing document to all attorneys of record.

So certified, this the 3rd day of January, 2023

/s/ Claire Barker
CLAIRE BARKER